

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

IN RE:
MARIA PEREZ

CASE NO.: 9:15-BK-03389-FMD
CHAPTER: 13

DEBTOR

RESPONSE TO DEBTORS' OBJECTION TO CLAIM(S)
CLAIM NO. 4 OF CIT BANK, N.A.

Creditor, **Financial Freedom, a division of CIT Bank, N.A.**, ("Claimant"), by and through the undersigned counsel, hereby files this *Response to Debtor's Objection to Claim(s)*. *Claim No. 4 of CIT Bank, N.A* (the "Response"); and in support, respectfully alleges the following:

1. Claimant is first mortgagee for a loan on property owned by Debtors, located at 1163 Whitehead Creek Loop, Fort Myers, FL 33916.

2. Claimant affirms a timely Proof of Claim [Claim 4-1] was filed on August 4, 2015 in the total debt amount of \$183,189.06.

3. Claimant affirms that an Amended Proof of Claim [Claim 4-2] was filed on March 2, 2016 in the total debt amount of \$183,189.06.

4. On March 18, 2016, the Debtor filed her Objection to Claim(s). Claim No. 4 of CIT Bank, N.A [DE 32] (the "Objection") and in such *Objection*, Debtor claimed that she has "assumed her late husband's mortgage loan and fully reinstated same by making a payment of \$5,746.41 by February 5, 2016."

5. Claimant confirms that the Debtor has *applied* for the Home Equity Conversion Mortgage (HECM) Program: Non-Borrowing Spouse Program with Claimant; however, Claimant objects on the basis that the Debtor has failed to complete obligations under the Non-Borrowing Spouse program. As of the date of filing this *Response*, the Debtor and/or Counsel for the Debtor have failed to provide Claimant will proof of insurance and proof of payment for the same.

6. Furthermore, the Claim should stand as is since the debt is against the Debtor and had arisen before the date of the filing of the petition as per §501(d) of the Bankruptcy Code and it reflects the status of the loan at the time of filing. By the Debtor's own admission on the Objection to Claim, the "assumption" was not applied and/or completed until post-petition.

7. In addition, Objections to proofs of claim are governed by §502(a) of the Bankruptcy Code, which provides “[a] claim or interest, proof of which is filed under §501 of this title, is deemed allowed, unless a party in interest . . . objects.” *11 U.S.C. §502(a)*. “The burden of proof is on an objecting party to produce evidence ‘equivalent in probative value to that of the creditor to rebut the *prima facie* effect on the proof of claim.’” *In re Winn-Dixie Stores, Inc.*, 418 B.R. 475 (Bankr. M.D. Fla. 2009).

8. Because Claim 4-2 is *prima facie* evidence of the Debt as of the date of the Bankruptcy Petition, and the Debtor presents no evidence to rebut the *prima facie* effect of Claim 4-2, the original loan terms remain in effect.

9. Claimant reserves the right to supplement and/or amend this *Response* in the future.

10. Claimant requests a hearing be set on the Debtor’s Objection.

WHEREFORE, **Financial Freedom, a division of CIT Bank, N.A.**, respectfully requests that this Court enter an Order denying Debtors’ Objection to Claim(s). Claim No. 4 of CIT Bank, N.A, and awarding any and all other relief that this Court deems just and appropriate.

Scott C Lewis, Esq.
Albertelli Law
Attorney for Secured Creditor
PO Box 23028
Tampa, FL 33623
Telephone: (813) 221-4743
Facsimile: (813) 221-9171
bkfl@albertellilaw.com

By: /s/ Scott C Lewis
Scott C Lewis
Florida Bar No.: 112064

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided via electronic and/or regular U.S. Mail to the parties on the attached service list, this 23 day of March, 2016.

SERVICE LIST

Maria Perez
1163 Whitehead Creek Loop
Fort Myers, FL 33916

Henry Hernandez
Navarro Hernandez, P.L.
P.O. Box 34-7650
Coral Gables, FL 33234

Jon Waage
P O Box 25001
Bradenton, FL 34206-5001

Scott C Lewis, Esq.
Albertelli Law
Attorney for Secured Creditor
PO Box 23028
Tampa, FL 33623
Telephone: (813) 221-4743
Facsimile: (813) 221-9171
bkfl@albertellilaw.com

By: /s/ Scott C Lewis
Scott C Lewis
Florida Bar No.: 112064